Farms and Fun: Reducing Liability Risk for Agritourism

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Farms and Fun: Reducing Liability Risk for Agritourism

Research & Materials

State Agritourism Statutes

Agritourism and Insurance

Agritourism Immunity Laws in the United States

Agritourism Best Management Practices and Plan of Operation

Workbook: Emergency procedures and safety information for agritourism and related outdoor

events

Decision Making for New Agritourism Activities

Trends in Agritourism: Popular Events & Activities

Overall Trend 1. Agritourism 365



- - a. More than fall!
 - b. Events & activities out of season
 - c. Spread Fix Costs and Financial Risk
 - d. More than revenue -Customer **Awareness**
 - e. Keep 'best' staff for all/most of year
- 2. Authenticity



Trends We See...

- 1. Weddings
- 2. Private Events & Photography
- 3. Beer, Wine, Spirits
- 4. Culinary
- 5. Adventure & Agtivities



1. Weddings



- Pricing
- Add planning services
- Alcohol!?!?
- Rent items

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2. Private Events & Photography







- Birthdays
- Engagements
- Showers
- Unsupervised events?
- Contracts, farmstead rules, etc.



3. Beer, Wine, Spirits



- Always cutting edge!
- Adding more value to crops
- Tastings
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4. Culinary



- On-Site Food
- Dinner you do/promote
- Dinner for charity
- Specific, higher value added products



5. Adventure & Ag-tivities

(Exercise)



- · Connecting to food in a fun way
- Unplugging
- Mazes are still relevant
- Nature connections
- Games, Games & More Games
- Zombie paint

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Planning Agritourism **Activities** Where do we begin?



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Decision Making for New Agritourism Activities

What activities worked for you? For others? How do you decide if it will work for your farm?

Decision making for new agritourism activities at the farm are complex. Many farms adopt new activities based on seeing the activity at another farm or venue. While lots of planning goes into the activity, few farms have a comprehensive process they use in developing new activities. The categories below were developed based on reviews of agritourism farms in Ohio to use in selecting new activities.

Enhances My Farm Brand – The farm's brand is its biggest asset. The brand keeps people returning year after year for activities and events. The brand says who the farm is, how they operate and how they treat customers. Reviewing each new activity as a part of the farm's brand helps ensures continued success. Using the mission statement to guide the discussion and talk about how the activity fits within the brand and specific aspects of the farm.

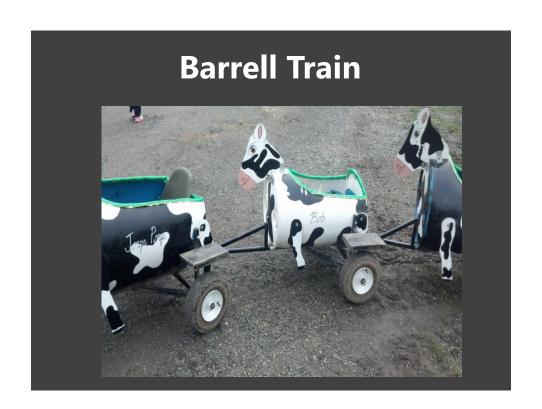
Fits My Target Market – Teenagers are very different from toddlers. Keeping mom and dad or grandma and grandpa engaged during visits to the farm matters. Discuss how the target market will engage with the activity.

Safety and Insurance Considerations – Begin by researching best practices for the event (if they exist), and think through scenarios of customer use. Review the idea with your insurance company to see what questions or suggestions they might have. Utilize the website safeagritourism.org provides detailed information to plan for new activities and best practices for many common activities on farms in the US. The website includes walkthroughs of activities, safety checklists, and many resources to assist. In addition to using this information for new activities, agritourism farms should utilize this website for reassessing current activities on their farms.

Labor, Expertise and Cost to Build/Install – While farmers love to build things themselves, this is not always the best choice. Some insurance companies require manufacturer's specifications and use requirements. Items such as bridges may fall under county jurisdiction. Make decisions on which parts of the activity can be built versus what should be purchased. Purchasing decisions should pay special attention to quality of products and life expectancy.

Topics to Guide Discussion

- 1. Enhances My Farm Brand
- 2. Fits My Target Market
- 3. Safety and Insurance Considerations
- 4. Labor, Expertise and Cost to Build/Install
- 5. Labor to Operate 6FAEF come or Benefit to the Farm





Activity Idea	Enhances my farm brand	Fits my target market	Safety and Insurance considerations	Labor, expertise and \$ to build/install	Labor to operate	Income or benefit to the Farm	Other
Slingshot	Yes – active, can do with family	Connects parents/kid s	Regular safety checks needed New slingshots eason Build is specific due to potential turning of pocket	Est. \$500 per site in supplies	1 person per 2 slingshots. Labor cost would be \$13/hour of operation	Did budget. The farm will net \$10,000 per season	Mom hates this idea. Many accidents on other farms









Farm Fun and Liability Risk

Activity Idea	Enhances my farm brand	Fits my target market	Safety and Insurance considerations	Labor, expertise and \$ to build/install	Labor to operate	Income or benefit to the Farm	Other
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Agritourism and liability risk

- 1. Negligence
 - A failure to meet the appropriate duty of care that causes injury to a person or property.
- 2. Product liability
 - A defective product causes injury to a person or product.

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2-year-old boy dies from injuries suffered when bounce pad blows away near Lincoln

LOCAL & STATE > POSTED AUGUST 9, 2017 | Updated August 10, 2017



Family of Oakland teenager killed in hayride crash settles lawsuit with farm

INCREASE FONT SIZE

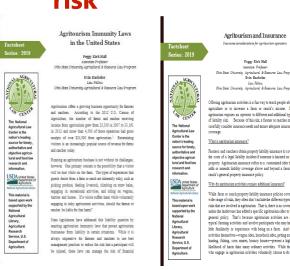
Cassidy Charette was killed on Oct. 11, 2014, in a haunted hayride at Harvest Hill Farms.



Managing agritourism liability risk

- Selection
- Preparedness
- Insurance
- Immunity laws

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Immunity laws

- Agritourism immunity laws
- Recreational user laws
- Equine activity acts
- U-pick immunity laws

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States with agritourism immunity laws				
for agritourism businesses				
Alabama	Maine	Oregon		
Alaska	Minnesota	South Carolina		
Arkansas	Mississippi	Tennessee		
Colorado	Missouri	Texas		
Florida	Montana	Utah		
Georgia	Nebraska	Virginia		
Idaho	New York	Washington		
Indiana	North Carolina	West Virginia		
Kansas	North Dakota	Wisconsin		
Kentucky	Ohio			
Louisiana	Oklahoma			



Agritourism immunity laws

- Protect the agritourism operator from legal liability for injuries resulting from certain agritourism activities.
- Based on the legal theory of assumption of risk.
 - A participant who voluntarily chooses to engage in a risky activity is responsible for his/her own safety and assumes the risk of being injured by that activity.

Common elements of agritourism immunity laws

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Defining "agritourism"

- What types of operators and activities does the immunity law protect?
- An operator or activity that doesn't fit definitions won't receive immunity.
- Common requirements:
 - Activity takes place on a "farm," "ranch," "commercial farm," "working farm," "farm engaged in agricultural production."
 - Operator may or may not receive compensation for the activity.
 - Activity is for educational, recreational, entertainment, historical, cultural purposes.
 - Statute may list specific examples.

Oklahoma Agritourism Activities Liability Limitations Act

"Agritourism activity" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

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Inherent risks

- Immunity extends only to the "inherent risks" of activities.
 - Naturally occurring risks over which operator has little or no control.
- Statutes define "inherent risks"
 - Fairly consistent from state-to-state, with exception of diseases from animals or manure.
 - Ohio includes possibility of contracting illness resulting from physical contact with animals, feed, waste or surfaces contaminated with waste.
 - Maine includes "the depositing of manure."
 - Several laws include participant's actions as an inherent risk.



Kansas Agritourism Promotion Act

"Inherent risks..." means those dangers or conditions which are an integral part of such agritourism activity including, but not limited to, certain hazards such as surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers of structures or equipment ordinarily used in farming or ranching operations. "Inherent risks of a registered agritourism activity" also includes the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to follow instructions given by the registered agritourism operator or failing to exercise reasonable caution while engaging in the registered agritourism activity.

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Exceptions to immunity

- Situations that do <u>not</u> receive liability protection.
- Common exceptions:
 - Operator's acts constitute negligence or willful or wanton disregard for safety
 - Operator has actual knowledge of a dangerous condition and fails to warn.
 - Operator fails to properly train employees
 - Operator fails to vaccinate or quarantine sick domestic animals.
 - Operator permits minors to use facilities not reasonably appropriate for age.
 - Operator fails to make reasonable inspection of equipment or property.
 - Operator did not meet affirmative requirements of the law.



Affirmative requirements

- · Actions operator must take in order to receive the law's protection.
- Most common: must provide notices to participants.
 - Posted warning signs.
 - Notices in written agreements.
- Some states also require registration or approval of operation plan.



State laws that require operator to provide notices

	On posted signs	In contracts		On posted signs	In c
Alabama	✓		New York	✓ -	
Arkansas	✓	√ *	North Carolina	✓	
Colorado	✓		North Dakota	✓	
Florida	✓	✓	Ohio	✓	
Georgia	✓		Oklahoma	✓	
Idaho	✓	✓	Oregon	✓	
Indiana	✓	✓	South Carolina	✓	
Kansas	✓	✓	Tennessee	✓	
Kentucky	√ **	✓	Texas	✓.	
Louisiana	✓		Utah	✓	
Maine	√ **		Virginia	✓	
Minnesota	✓		Washington	√	
Mississippi	✓	✓	West Virginia	√	
Missouri	✓	✓	Wisconsin	√	
Nebraska	✓.		* In contracts with agri ** May post a sign or of received written notice.	tourism participant only. Arkan obtain a signed release indicatin K.S.A. 247-809(a) and 7 M.F	nsas 2-11-1 ig that parti R.S.A § 253

Wisconsin

Notice: A person who observes or participates in an agricultural tourism activity on this property assumes the risks inherent in the agricultural tourism activity. Risks inherent in the agricultural tourism activity may include conditions on the land, the unpredictable behavior of farm animals, the ordinary dangers associated with equipment used in farming operations, and the potential that a participant in the agricultural tourism activity may act in a negligent way that may contribute to injury or death. The agricultural tourism provider is not liable for the injury or death of a person involved in an agricultural tourism activity resulting from those inherent risks.

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Registration or operation plans

- Operator may/must register with state agency.
- Only registered operations receive liability protection.
- Registration sometimes includes promotion and publicity by the state agency.
- Louisiana requires operation plan certification.
 - Listing of activities, plans for minimizing risks, locations of warning signs.
 - Reviewed and approved by Louisiana Extension.
 - Update every 5 years or when adding a new activity.

What about waivers?

- A waiver or release of liability states that the participant is assuming the risk of the activity and promises not to sue the operator if harmed.
- Does the immunity law negate need for waivers?
 - Does the law address waivers?
 - Some allow use of waiver rather than posted signs.
 - Does the law cover all of the operation's activities?
 - Does insurance provider or attorney encourage use of waivers?



Other immunity laws might Recreational user statutes • All 64-

- - All states have one.
 - Immunity for allowing recreational uses on property.
 - Some state agritourism laws amended recreational use state to include agritourism or farm touring.
 - Some laws do not apply if landowner receives fee or benefit.
 - See our compilation on national aglawcenter.org/statecompilations



Other immunity laws might apply

- U-pick immunity laws
 - No liability for harm to persons who are on land to purchase or pick fresh produce sold directly from the field.
 - Narrow circumstances: extends to injuries due to land surfaces or tillage of soil.
- · Equine activity acts
 - Liability protection if a participant is harmed due to inherent risks of participating in equine activities and being around equine.
 - Require operator to post warning signs.



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Using immunity laws

- · Raised as a defense in litigation.
- Harm must be result of an inherent risk or other risk identified in the statute.
- Operator must meet all definitions and requirements of statute.
- · Waivers might still be advisable.
- The laws don't replace Best Management Practices and insurance!

Agritourism and Insurance

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Agritourism insurance is special insurance

- Agritourism activities aren't usually included in a general property liability policy.
- Operator must obtain customized "riders" that amend liability coverage above and beyond the general policy.
- Riders should be tailored to the activities taking place on the operation.

How much will it cost?

- Depends upon many factors:
 - Types and number of activities.
 - Number of visitors.
 - Risks inherent in the property.
 - Precautions and management practices.
 - Compliance with laws, regulations and industry practices.
 - · Immunity laws.



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Insurance considerations

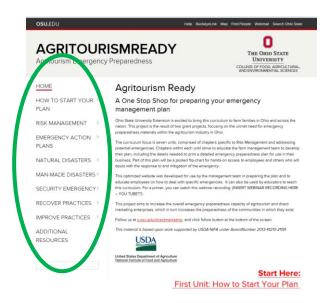
- · Not all companies offer agritourism riders.
- Find a company and agent familiar with agritourism.
 - Check company's A.B. Best rating
- Review all activities with agent to ensure coverage.
- Be aware of policy exclusions.
- Maintain regular communication with agent—new or ceased activities, property walk-throughs.
- Keep adequate records.
- Don't disregard practices and preparedness.

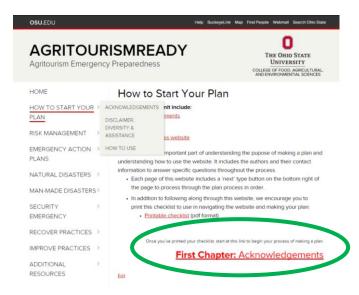


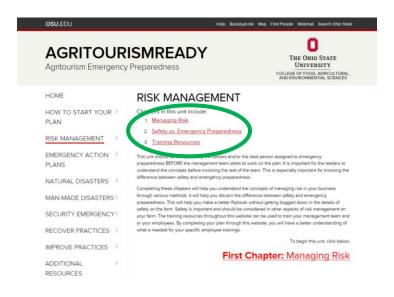
Emergency Preparedness

Online Bulletin Available at:

u.osu.edu/agritourismready







Risk Management

- Perform a Risk Analysis
- Determine your actions

Risk Management Method Matrix					
	Low Severity	High Severity			
Low Frequency	Reduce or Accept	Reduce or Accept			
High Frequency	Reduce or Transfer	Reduce, Transfer or Avoid			



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Safety vs. Emergency

Safety Preparations

- Putting in fire control systems
- Making rules
- Eliminating potential injury 'items'
- Equipment back-ups
- Etc.....



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Emergency Preparedness

The National Fire Protection Association (NFPA)

"Activities, tasks, programs, and systems developed and implemented prior to an emergency that are used to support the prevention of, mitigation of, response to, and recovery from emergencies."



What does it mean to be Emergency Ready?



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Why Be Prepared in **Emergency Management?**

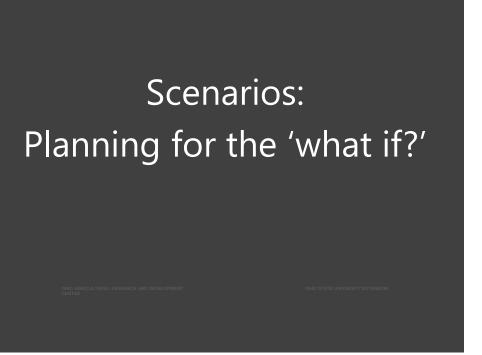
- Emergencies and disasters do not discriminate they can happen anytime, anywhere, and to anyone.
- Just as individuals and families must prepare for emergencies, so too must businesses. Preparedness helps to ensure the safety of people and assets, which in turn helps to protect the business investment itself.
- •Agriculture operations are unique compared to other businesses.



Creating a Farm Support Team

- Start with county Emergency Management Agency
- Meet with local fire department, Health Department, EMA, Sheriff, Local Police, Attorney and Insurance Representative.
- Each team member has a Unique role
- Host a familiarization tour of your farm and agritourism operation
- Provide a copy of finish product to team members.





Traffic Accident

- Train staff to call 911 and give location
- · Treat as an off farm accident
- Provide emergency access
- · Work with officials to mitigate risk to emergency responders





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On June 29th, a wedding was about to take place at the scenic Blue Waters Farm. Unfortunately, at 2pm a derecho straight wind storm blew through and took out the power in the entire tri-county area. Currently there is no estimated time of when the power will be restored. The passing storm caused the temperature to rise to 85 degrees with humidity at 90 percent. The wedding is supposed to start at 6:30pm in the barn and currently there is a tree across the driveway, the caterer doesn't know where to setup, and the generator is too loud that it drowns out the ambience of the wedding.

- What precautions should the owner take before the wedding begins?
- What food safety concerns are there?
- What are the ventilation concerns?
- What other utilities go out when the electric goes out?



Lost Power/Utilities

Can you stay open?

- Worth having generator?
- · Water for food service
- Septic issues
- Your payment systems



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Review what to do when 'it' happens Example: **Recover**



Who's in charge? This is the communications person on the farm.

- Every question goes to this one person
- İt's part of your plan
- Do not deviate no matter what
- Consider a professional PR person



End Result: An Emergency Action Plan

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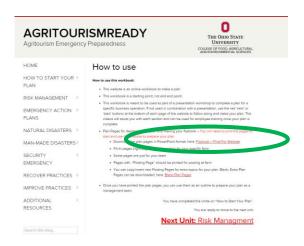
A flip chart to hang up at the farm will be your end result.

It is a starting point to adopt emergency plans.

The Powerpoint file can be branded to the specific farm.

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